

1 Honorable Benjamin H. Settle  
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IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

9 ROBERT A. WEISER, )  
10 Plaintiff, ) No. CV10-05883-BHS  
11 vs. ) FIRST AMENDED COMPLAINT  
12 EVERGREEN INTERNATIONAL SA, ) FOR DAMAGES  
13 PANAMA, a foreign corporation, ) (DEMAND FOR JURY TRIAL)  
14 Defendant. )  
15

16 COMES NOW plaintiff Robert A. Weiser, by and through his  
17 attorney, Brett A. Purtzer of the Hester Law Group, Inc., P.S.  
18 and for a cause of action, states as follows:

I. PARTIES

19 1.1 The Court has jurisdiction over the subject matter  
20 and the parties hereto.

21 1.2 Plaintiff Robert A. Weiser is a resident of  
22 Puyallup, Pierce County, Washington and is a citizen of the  
23 State of Washington.

1           1.3 Defendant Evergreen International SA, Panama  
2 (hereafter Evergreen) has its principal place of business in  
3 Panama. Defendant regularly transacts business in the County  
4 of Pierce, State of Washington.

5           1.4 At all times material hereto, defendant Evergreen  
6 was and is the operator and owner of and responsible for the  
7 vessel M/V Ever Unique, a vessel in navigation in the navigable  
8 waters of the United States.

## II. JURISDICTION AND VENUE

10        2.1 The events forming the basis of this action occurred  
11 in Pierce County, Washington.

12           2.2 This court has jurisdiction pursuant to 28 U.S.C. §  
13 1332 because it is a civil action between citizens of a State  
14 and citizens or subjects of a foreign state and the matter in  
15 controversy exceeds \$75,000.00.

16        2.3 This court has jurisdiction pursuant to 28 U.S.C. §  
17 1333 and the "saving to suitors" clause because it is a civil  
18 case within the court's admiralty and maritime jurisdiction.

19       2.4 Venue is proper in the District Court for the  
20 Western District of Washington at Tacoma.

### III. FACTS

22           3.1 That at all times pertinent hereto, plaintiff was a  
23 longshoreman as defined by the Longshore and Harbor Workers'  
24 Compensation Act, 33 U.S.C. § 901 et seq. That this case is

1 cognizable under §905(b) of the aforementioned Act and the  
2 General Maritime Law of the United States of America and  
3 applicable laws of the State of Washington.

4       3.2 On or about the 5th day of December, 2008,  
5 plaintiff's employer, Ports America, was engaged in rendering  
6 longshoring services on and about the vessel M/V Ever Unique  
7 which was pierside in navigable waters at a dock owned by the  
8 Marine Terminal Corporation, Tacoma, Washington, and plaintiff  
9 was employed as a longshoreman on that site and at that time  
10 was performing such services on behalf of his employer.

11       3.3 On or about the 5th day of December, 2008, while  
12 working aboard the M/V Ever Unique, plaintiff suffered severe  
13 and disabling injuries when a rusted grating gave way causing  
14 plaintiff to fall through the grating, approximately eight  
15 feet, breaking his left femur and suffering serious injury.

16       3.4 The rusted grating was owned by the defendant.

17                          IV. NEGLIGENCE

18       4.1 Defendant breached its duty of care that the vessel  
19 owner or operator owed to plaintiff as a longshoreman,  
20 including, but not limited to the following:

- 21       a.     The vessel was in an unsafe condition.
- 22       b.     Defendant Evergreen and its agents knew or should  
23                          have known of the unsafe condition.
- 24       c.     Defendant Evergreen and its agents failed to

properly inspect the ship and it's equipment.

d. Defendant Evergreen and its agents failed to warn plaintiff of hazards of which it knew or should have known.

4.2 Defendant Evergreen is liable to plaintiff under 33 U.S.C. § 905 for his injuries.

4.3 Defendant negligently failed to turn over the vessel M/V Ever Unique to the longshoremen in a reasonably safe condition for doing their work and negligently failed to properly maintain equipment under the defendant's control and this negligence by the defendant caused plaintiff's accident.

#### V. INJURIES

5.1 As a direct and proximate result of the negligent acts and conduct of the defendant, plaintiff Robert A. Weiser sustained severe injuries to his person.

#### VI. DAMAGES

6.1 As a direct and proximate result of the defendant's negligence, plaintiff has incurred medical expenses as a result thereof and may be required to undergo additional medical treatment in the future. Additionally, the plaintiff has incurred and will incur expenses associated with said treatment, the exact sums of which are unknown at this time.

6.2 As a direct and proximate result of the defendant's negligence, plaintiff has suffered pain, anguish, disability,

1 lost income, loss of earning capacity and loss of ability to  
2 enjoy life. He will continue to suffer such damages into the  
3 future.

## VII. PRAYER FOR RELIEF

5 WHEREFORE, plaintiff, Robert A. Weiser, prays for  
6 judgment against the defendant, as follows:

- 7        1. For general damages, according to proof at trial;
  - 8        2. For medical and physical therapy expenses, drugs and
  - 9 other necessary expenses according to proof at trial;
  - 10      3. For loss of earnings and earning capacity and fringe
  - 11 benefits according to proof at trial;
  - 12      4. For costs of suit incurred herein;
  - 13      5. For plaintiff's attorney's fees;
  - 14      6. That this matter be tried by a jury; and
  - 15      7. For such other and further relief as this court may
  - 16 deem just and proper.

17 DATED this 11 day of May, 2011.

HESTER LAW GROUP, INC. P.S.  
Attorneys for Plaintiff

By:

Brett A. Purtzer  
WSBA #17283